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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/61-HII(2)-2023/18786.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **107/2020 dated 16.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANMOL S/O SH. SUBHASH CHANDER R/O H.NO.5039, MODERN HOUSING COMPLEX, MANIMAJRA, U.T. CHANDIGARH (*Workman*)

AND

THE SUPERINTENDING ENGINEER, CONSTRUCTION CP 1 & 2, SECTOR 9-D, U.T. CHANDIGARH (*Management*)

AWARD

1. Anmol, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Junior Draughtsman through outsourcing agency w.e.f. 15.09.2016 and his last drawn wages were ₹ 19,876/- per month. The workman continuously worked as Junior Draughtsman with the Executive Engineer, CP 1 & CP 6, Sector 9, U.T. Chandigarh since 15.09.2016 to 31.08.2018 honestly & sincerely to the full satisfaction of superiors but department had paid the salary up to the period of 07.05.2018. The salary for the period from 09.05.2018 to 31.08.2018 has not been paid so far. The work & conduct of the workman remained satisfactory throughout his long service tenure as no complaint has ever been made by the management. The workman has put in more than 240 days service during the preceding 12 months before the illegal termination of his services. The management did not allow the workman to join duty after 31.08.2018 (A.N.). This action of the management is in utter violation of Section 25-F of the ID Act as neither any notice was given nor any retrenchment compensation was paid to him before termination of service. The management terminated the services of the workman without any rhyme & reason and in utter violation of principle of natural justice, which is bad in law. The termination is also in violation of Section 25-G of the ID Act as at the time of termination of services, his

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juniors were retained in service. This action of management amounts to unfair practice as contained in Section 25-T r/w point No.10 of Schedule V of ID Act. The workman has been approaching the management to take him back on duty with continuity of service along with full back wages and the management had been assuring the workman that he would be taken back on duty but to no effect. This action of the management is also violative of Section 25-H of the ID Act as after his termination fresh persons have been appointed. Prayer is made that workman may be reinstated with continuity of service along with full back wages, earned wages withheld from 08.05.2018 to 21.08.2018 and attending benefits with 12% compound interest.

3. On notice, management contested the claim statement by filing written statement on 03.06.2021 wherein preliminary submissions / objections are raised on the ground that the present claim petition is not maintainable against the answering management as the workman was hired through outsource agency. The workman has not impleaded the contractor as party. Therefore, the present claim petition is bad for non-joinder of necessary party. The answering management had executed an agreement with M/s R. R. Builders Provider for providing manpower on outsource basis. The contract was awarded to M/s R. R. Builders for six months from 08.11.2017 to 07.05.2018 and the workman was deputed at office of Executive Engineer, CP Division No.6 by the contractor and the agreement was terminated with efflux of time. No relationship of employer & employee exists between the answering management & workman. The services of the workman were hired by the contractor and the services of the workman were also terminated by the contractor.

4. Further on merits, it is admitted as correct that the workman was appointed as Junior Draughtsman through outsourcing agency w.e.f. 15.09.2016 and his last drawn wages were ₹ 19,876/-per month. It is further stated that the workman was hired on outsource basis through contractor. The last contract was with M/s R. R. Builders from 08.11.2017 to 07.05.2018 and the same was terminated with efflux of time and payment of contractor was regularised accordingly and no liability of contractor is pending in this account. The workman did not attend the office after 08.05.2018. Further, similar stand is taken as taken in the preliminary submissions / objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim petition may be dismissed in the interest of justice, equity and fair play.

5. The workman filed replication wherein contents of the written statement except admitted fact are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of parties, following issues were framed vide order dated 03.09.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management and workman ? OPM
3. Whether the claim statement is bad for non-joinder of necessary party ? OPM
4. Relief.

7. In evidence, the workman Anmol examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. photocopy of the attendance report of Junior Draughtsman working in EEC-1 for the month of 09/2016 and 10/2016 vide Mark 'A' & Mark 'B' respectively and copy of attendance roll for the period May 2018 to August 2018 vide Mark 'C' to 'Mark 'F' respectively.

8. The workman examined AW2 Jaswinder Singh - Clerk, Office of Executive Engineer, CP Division No.6, Sector 9, Chandigarh, who brought the summoned record in original and tendered into evidence copy of attendance register for the period from January 2018 to December 2018 vide **Exhibit 'AW2/1'**.

9. On 18.05.2023 Learned Representative for the workman closed evidence in affirmative.

10. On the other hand, management examined MW1 Suman Bala - Superintendent, Office of Executive Engineer, CP Division No.6, Sector 9, Chandigarh, who tendered her affidavit Exhibit 'MW1/A' along with copy of allotment letter dated 07.12.2017 vide Exhibit 'MW1/1' and copy of attendance register for the month of January, 2018 to June 2018 vide Exhibit 'MW1/2'. On 05.10.2023 Learned Law Officer closed oral evidence on behalf of the management. On 16.10.2023 Learned Law Officer closed documentary evidence on behalf of the management.

11. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management. My issue-wise findings are as under:-

Issue No. 1 to 3 :

12. All these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

13. Onus to prove issue No.1 is on the workman and onus to prove issues No. 2 & 3 is on the management.

14. To prove its case, the workman Anmol examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed that he was appointed as Junior Draughtsman w.e.f. 15.09.2016 and his last pay drawn was ₹ 19,876/-. He continuously worked with the management up to 31.08.2018 and the salary w.e.f. 08.05.2018 to 31.08.2018 was not paid. He has continuously worked for more than 240 days during the last preceding year and his services were terminated on 31.08.2018 when the management did not allow him to join the duty. The action of the management is in utter violation of Section 25-F of the ID Act as neither any notice was given nor any retrenchment compensation was paid to him before terminating his services. His services were terminated verbally without any inquiry and charge sheet hence violation of principle of natural justice, equity and fair play. At the time of termination, the person junior to him was retained in service, hence violation of Section 25-H of the ID Act. After his termination, new appointment was made, hence violation of Section 25-H of the ID Act. After termination he approached the management to appoint him with continuity of service and with full back wages. The management has been assuring him that he would be taken back on duty but all in vain. He may be reinstated with continuity of service along with full back wages and the management may be directed to pay salary w.e.f. 08.05.2018 to 31.08.2018. Learned Representative for the workman referred documents Mark 'A' to Mark 'F' to show that the workman has performed duty with the management w.e.f. 08.05.2018 to 31.08.2018.

15. The workman examined AW2 Jaswinder Singh - Clerk, Office of Executive Engineer, CP Division NO. 6, Chandigarh, who proved on record the attendance register for the period January 2018 to December 2018 vide Exhibit 'AW2/1'.

16. On the other hand, management examined MW1 Suman Bala - Superintendent, Office of Executive Engineer, CP Division No.6, Chandigarh, who vide her affidavit Exhibit 'MW1/A' deposed that she joined in office of Executive Engineer, CP Division No.6, Sector 9, Chandigarh as Superintendent on 02.08.2021 to till date. The management had executed an agreement with M/s R R Builders for providing manpower on outsource basis. The contract was awarded to M/s R R Builders for six months from 08.11.2017 to 07.05.2018 and the workman was deputed at Office of Executive Engineer, CP Division No.6, Chandigarh by the contractor and the agreement was terminated with the efflux of time. The copy of allotment letter dated 07.12.2017 is Exhibit 'MW1/1'. MW1 further deposed that no relationship of employer & employee exist between the management and workman as services of the workman were hired by the contractor and the services of the workman were also terminated by the contractor. The workman was hired on outsource basis through the contractor. The last contract was with M/s R R Builders from 08.11.2017 to 07.05.2018 and the same was terminated with efflux of time. The payment of contractor was regularised accordingly and no liability of contractor is pending in this account. As per record available in this office, the workman attended office up to 08.05.2018. The copy of attendance register is Exhibit 'MW1/2'.

17. From the oral as well documentary evidence led by the parties, it comes out that the workman was appointed by the contractor and deployed to work with the management-department. The workman was first appointed by Nain Contractor, Sector 17, Chandigarh on 15.09.2016 and the workman was lastly deployed with the management through contractor M/s R R Builders. In this regard, AW1/workman in his cross-examination stated that he joined the department on 15.09.2016 in CP-1. Thereafter, he was transferred to CP-6 after one year. He was appointed by the Nain Contractor, Sector 17, Chandigarh on 15.09.2016. When he was posted in CP-6, he was deployed by the contractor M/s R R Builders. MW1 in her cross-examination admitted as correct that the workman remained deployed on contract through outsource agency w.e.f. 15.09.2016 to 14.09.2017 and thereafter the workman was again deployed in their department by the other contractor M/s R R Builders w.e.f. 08.11.2017 to 08.05.2018.

18. There is no dispute between the parties that the contract of the management department with M/s R R Builders was from 08.11.2017 to 07.05.2018. The workman has not disputed his salary up to 07.05.2018. The workman has alleged that he was not paid salary w.e.f. 08.05.2018 to 31.08.2018. The workman has taken the plea that he continued working with the department even after the expiry of contract of R R Builders with the management (contract expired on 07.05.2018) i.e. from 08.05.2018 to 31.08.2018 but he has not been paid salary by the management for the said disputed period from 08.05.2018 to 31.08.2018. On the other hand, the management has taken the plea that the workman was deployed in their department through the outsource agency / contractor and this fact is not disputed by the workman. Learned Law Officer for the management argued that the workman being deployed through the contractor was employee of the contractor. It was the contractor, who was paying salary to the workman. The contractor had issued the appointment letter to the workman and it is the contractor, who terminated the services of the workman due to expiry of contract with the management by efflux of time. Therefore, there is no relationship of employer & employee between the management-department and the workman. In the absence of relationship of employer & employee between the management and the workman, the management has no liability to pay any salary to the workman as claimed by him. Even the management is not competent to reinstate the workman. The dispute, if any, is between the workman and contractor M/s R R Builders but the contractor has not been impleaded as a party in the present case. As per the attendance register Exhibit 'MW1/2' maintained with the department, there is no attendance of the workman beyond 08.05.2018. The attendance of the workman up to 08.05.2018 is not disputed by the management. The copies of the attendance register Mark 'C' to Mark 'F' are not sufficiently proved into evidence for want of original of the same. To my opinion, as far as relationship of employer & employee between the management and the workman is concerned, it is own case of the workman that he was deployed with the department through outsource agency. Thus, the workman is proved to have been appointed by the outsource agency / contractor. As discussed above AW1 / workman in his cross-examination has admitted that initially he was appointed through Nain Contractor, Sector 17, Chandigarh on 15.09.2016 and thereafter he was appointed by contractor M/s R R Builders and the workman remained deployed with the management-department under M/s R R Builders from 08.11.2017 to 07.05.2018. AW1 / workman in his cross-examination admitted as correct that when he was working under the contractor, his attendance was verified by Head Draughtsman of the department. AW1 admitted as correct that photocopies Mark 'A' to Mark 'F' do not bear the signatures of the Head Draughtsman regarding verification of the attendance. AW1 admitted as correct that he was paid salary by the contractor. AW1 stated that he was not issued any appointment letter or termination letter by the management-department. From the aforesaid version of AW1, it is made out that the workman was employee of the contractor and not the management-department. There is no relationship of employer & employee between the management-department and the workman. The photocopies of the attendance record / register Mark 'A' to Mark 'F' does not carry any authenticity. AW1 did not produce into evidence the original of Mark 'A' to Mark 'F'. On the other hand, the management during evidence of MW1 Suman Bala brought the original attendance register and placed on record copy of the attendance register for the period w.e.f. January 2018 to June 2018 vide Exhibit 'MW1/2' which shows the attendance of the workman from January 2018 to 08.05.2018. There is no attendance of the workman from 09.05.2018 to 30.06.2018. The contention of Learned Representative for the workman that the copy of the attendance register Exhibit 'MW1/2' is forged document is not acceptable because the entries of the attendance in photocopy Exhibit 'MW1/2' are correct according to the original attendance register produced in the Court. No doubt the original attendance register does not bear the seal and signature of the Executive Engineer, CP Division No.6, Chandigarh whereas copy of the register Exhibit 'MW1/2' bears the seal and signatures of Executive Engineer, CP Division No.6, Chandigarh. The perusal of the copy of the attendance register Exhibit 'MW1/2' would show that it bears the original seal and signature of the Executive Engineer, CP Division No.6, Chandigarh as attestation of the document being true copy of the original. There was no necessity to affix the seal or the signatures on the original register. Similar is the position of Annexure 'R2' which is photocopy of the attendance roll for the month of May 2018 showing presence of workman Anmol till 08.05.2018. Annexure 'R2' bears the seal and signature of Sub-Divisional Engineer as well as Executive Engineer, CP Division No.6, Chandigarh. In case, the seal and signatures are affixed in original on a photocopy it will not amount to tempering with the documents as there is addition or alteration in the attendance of workman Anmol in the

photocopies Exhibit 'MW1/2' and Annexure 'R2' on comparison with the original register. MW1 in her cross-examination stated that she has brought the original record. MW1 denied the suggestion as wrong that on 08.05.2018 the department told the workman to continue his job as the work is pending. MW1 in her cross-examination further stated that she has seen copies of attendance roll Mark 'C' to Mark 'F' which are not of their department, therefore, she cannot comment upon the same. Exhibit 'MW1/2' is the true copy of attendance register relating to outsourcing staff of drawing branch C-6. She has seen Annexure R2 annexed with the written statement filed by the management which bears the seal and signatures of the Sub-Divisional Engineer as well as Executive Engineer, CP Division No.6, Chandigarh whereas in the original attendance roll, there is no seal and signature of the said officer. MW1 voluntarily stated that Annexure 'R2' bears the seal and signature of the said officer in token of attestation of the document / photocopy. Therefore, the documents i.e. copies of attendance register Exhibit 'MW1/2' and Annexure 'R2' are genuine document. As per the said documents the workman did not perform duty with the management-department after 08.05.2018. Therefore, the workman is not entitled to wages / salary for the period w.e.f. 09.05.2018 to 31.08.2018 as he did not perform duty with the management during this period and it is settled law that there is no pay for no work.

19. As far as termination of the services of the workman are concerned, the workman / AW1 in his cross-examination has admitted that he was neither issued appointment letter nor issued any termination letter by the management. Moreover, it is own case of the workman that he was deployed with the management department through outsource agency / contractor. The workman has not impleaded the outsource agency / contractor as party to this case. Therefore, the present claim is bad for non-joinder of necessary party.

20. Above all, MW1 in her affidavit Exhibit 'MW1/A' categorically stated that no relationship of employer & employee exist between the management & workman as services of the workman were hired by the contractor and the services of the workman were also terminated by the contractor. The workman was hired on outsource basis through the contractor. The last contract was with M/s R R Builders from 08.11.2017 to 07.05.2018 and the same was terminated with efflux of time. The payment of contractor was regularised accordingly and no liability of contractor is pending in this account. In cross-examination, the workman did not controvert the aforesaid version of MW1 by way of any suggestion. It is settled law that the version of the witness which is not controverted in cross-examination is deemed to be admitted. The case law referred by Learned Law Officer reported in **2015(1) RCR (Civil) 247 P & H** titled as **Smt. Sheona Versus Smt. Maro & Others**, is applicable to the facts of the present case to an extent, it has been held that if a witness is not cross-examined in respect of her deposition on a particular fact and is not confronted with the plea to the contrary, the fact so stated by the witness is deemed to have been admitted.

21. In view of the reasons recorded above, the workman has failed to prove termination of his services by the management-department. The workman has also failed to prove that he performed duty with the management-department from 09.05.2018 to 31.08.2018. Even otherwise, the contract of the management-department with contractor M/s R R Builder expired on 07.05.2018 with efflux of time. There is no evidence of the workman to prove that any worker junior to him deployed through the contractor was retained in service. There is no evidence of the workman to prove that any new hand is deployed at his place by the contractor with the management-department. Therefore, the workman has failed to prove violation of any provisions of the ID Act by the management-department.

22. Accordingly, issue No.1 is proved against the workman and in favour of the management. Issues No.2 & 3 are proved in favour of the management and against the workman.

Relief :

23. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

Dated : 16.10.2023

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 27th December, 2023

No.13/2/64-HII(2)-2023/18788.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **35/2021 dated 12.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

GURBAKSH SINGH, H. NO. 110, VILLAGE FAIDA NIZAMPUR, U.T. CHANDIGARH
(*Workman*)

AND

M/S DURGA TRADING CO., 110, VILLAGE FAIDA NIZAMPUR, U.T. CHANDIGARH
(*Management*)

AWARD

1. Gurbaksh Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as General Worker in the month of June, 1989. The workman remained in the un-interrupted employment up to 08.05.2019, when his services were illegally & wrongfully terminated by refusing of work. The workman was drawing ₹ 15,000/- per month as wages at the time of termination. On 09.05.2019, the workman went to attend his normal duty but he was refused work by the management without assigning any reason & notice. The workman asked for the reason of termination as there was no complaint against his work & conduct from any of his colleagues and superiors. The management did not give any reason of termination. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Sections 25-F of the ID Act. No charge-sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his re-instatement workman served upon the management a demand notice dated 04.11.2019. The management neither denied the contents of demand notice nor took the workman back on duty. The Assistant Labour Commissioner (ALC)-cum-Conciliation Officer, U.T, Chandigarh was requested for his intervention. The Assistant Labour Commissioner intervened but the dispute could not be settled within the stipulated period, as the management did not appear before the Conciliation Officer on any date fixed for settlement. The action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. Prayer is made that the workman may be re-instated with continuity of service along with full back wages and full attendant benefits without any change in his service conditions.

3. On notice, the management contested the claim statement by filing written reply wherein preliminary objections are taken on the ground that the petition is not maintainable, workman has not approached with clean hands and concealed the material facts. Besides, the petition is filed on the false and frivolous grounds to extract money from the management.

4. Further on merits, it is stated that the workman has worked with the management since June 1989 till May 2019. The workman was getting salary of ₹ 6,000/- per month and a room was provided to him. ₹ 4,000/- per month was fixed as rent for the said room which was deducted from his salary. Number of warnings were given to the workman not to come with drunkard condition because it was the regular habit of the workman to consume liquor heavily but he did not mend his ways. During the duties hours the workman consume liquor heavily and did not perform his duties. Even on that day i.e. 09.05.2019 he was under drunkard condition and was not able to do any work as such he was not allowed to enter in the premises. The management never received any notice or summon from the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh as such there is no question for any settlement or any proceedings as alleged. Rest of the averments of claim statement are denied as wrong and counter claim is made to the effect that as per the knowledge of the management, the workman joined duty with another agency i.e. M/s Singla Agencies, Village Faidan, Backside Kendriya Vihar, Sector 48-C, Chandigarh on 01.08.2021 @ of ₹ 8,500/- per month which was later on increased to ₹ 9,000/- per month. The workman is still residing in the premises allotted by the management and is paying rent @ ₹ 4,000/- per month since May 2021 onwards. In view of the above mentioned facts the claim statement may be dismissed.

5. The workman filed rejoinder wherein the contents of written reply are denied as wrong. It is admitted as correct that a room was provided to the workman but it was rent free accommodation. The workman is still residing at the allotted premises. The workman is unemployed and has not joined duty with M/s Singla Agencies on 01.08.2021 on a monthly wages of ₹ 9,000/-. Further averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 24.02.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is not maintainable ? OPM
3. Relief.

7. In evidence the workman examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. It is pertinent to mention here that in the claim statement the name of workman is spelled as Gurbaksh Singh whereas in his affidavit his name is spelled as Gurbax Singh and the workman had signed his claim statement and affidavit in Hindi language. The difference of spelling in the name of the workman is immaterial as there is no dispute of his identity. On 10.03.2023 the workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Santosh Singla - Proprietor of Singla Agencies, Village Faidan near Sector 48-A, Chandigarh. The management examined MW2 Ramsewak Gupta - Driver of M/s Durga Trading Company, who tendered his sworn-in affidavit Exhibit 'MW2/A'. On 08.09.2023 Learned Representative for the management closed oral evidence. On 12.10.2023 Learned Representative for the management closed documentary evidence.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

10. Onus to prove this issue is on the workman.

11. Under this issue workman Gurbaksh Singh examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity.

12. On the other hand, management examined MW1 Santosh Singla -Proprietor of Singla Agencies, who deposed that the workman Gurbaksh Singh had worked with the management at some occasion and not regularly. The workman was called for work at the instance of one labourer of their company who was sick. She does not know much about the working of Gurbaksh Singh as the business of their company on her name is handled by her husband.

13. MW2 Ramsewak Gupta, Driver of M/s Durga Trading Company vide his affidavit Exhibit 'MW2/A' deposed that he is the employee of management company for over 27 years. He has also been co-employee of claimant Gurbaksh Singh for more than 20 years as such he knows Gurbaksh Singh very well on work front as well as personally. He also knows that Gurbaksh Singh is an alcoholic and used to come drunk at the work place and he (deponent) used to forbid Gurbaksh Singh from doing so. It was disclosed to him by Gurbaksh Singh that he himself has left his employment at the respondent-company and they used to ask Gurbaksh Singh to come sober at work place. The respondent-company also provided the accommodation to Gurbaksh Singh at the expenses of the respondent itself, which now has been left by Gurbaksh Singh after leaving the employment of respondent-company on his own. The respondent never terminated the employment of Gurbaksh Singh at any point of time rather it was Gurbaksh Singh who left without informing the respondent-company.

14. From the oral as well as documentary evidence led by the parties, it comes out that admittedly the workman Gurbaksh Singh was employed with the management as general worker in June 1989 and remained in continuous employment of the management up to 08.05.2019. In this regard, the management in para 1 of reply of merits pleaded that the workman has worked with the management since June 1989 till May 2019. The workman has alleged that he was drawing ₹ 15,000/- per month as wages at the time of termination whereas the management has taken the plea that the workman was getting salary of ₹ 6,000/- per month as room was provided to him on rent at the rate of ₹ 4,000/- per month and the rent amount was deducted from the salary of the workman. The workman in his affidavit Exhibit 'AW1/A' and cross-examination stated that he worked up to 06.08.2019. When put to cross-examination workman / AW1 admitted as correct that in the claim statement he has mentioned that he worked up to 08.05.2019 and here in his statement he has mentioned the last date of his working as 06.08.2019. His statement that he worked up to 06.08.2019 is correct. To my opinion, the version of AW1 that he worked up to 06.08.2019 is not admissible into evidence being contrary to the pleadings and unsupported with any documentary proof. The plea taken by the management that accommodation consisting of one room was provided to the workman on rent @ ₹ 4,000/- per month stand falsified from the cross-examination of MW2, who in his cross-examination stated that the workman was provided rent free accommodation in the premises of the management. The workman was residing along with his family in the said accommodation. As far as the amount of last paid wages of the workman is concerned, the plea of the workman that he was drawing ₹ 15,000/- per month cannot be disbelieved because it is the duty of the management to maintain the wage record of its worker. The management did not produce and prove into evidence the wage record of the workman showing the amount of wages paid to the workman.

15. The plea taken by the management that Gurbaksh joined another agency i.e. M/s Singla Agencies on 01.08.2019 also does not stand proved. The management examined Mrs. Santosh Singla, Proprietor of M/s Singla Agencies who in her examination in chief categorically stated that the workman Gurbaksh Singh had worked with the management at some occasions and not regularly. MW1 in her cross-examination brought into evidence undated certificate on the letter pad of Singla Agencies vide Exhibit 'WX'. The contents of Exhibit 'WX' are reproduced as below:-

"I Santosh Singla, here by confirm that Gurbaksh Singh has joined my company on 1 August 2019 at that salary of Rs.8500/- and he is still working with us till date with salary Rs.9000."

When put to cross-examination MW1 stated that she has seen certificate Exhibit 'WX' issued by M/s Singla Agencies. The said certificate was prepared by her husband, who got it signed from her. She is not aware about the contents of the said certificate / Exhibit 'WX'. MW1 admitted as correct that certificate Exhibit 'WX' does not bear any reference number and date. She visits her company 3-4 times in a month. She does not know how many workers are working in their company. She does not know the names of the workers of her company. She does not know whether their company or her husband issued any appointment letter to its worker. She does not know which worker is receiving how much salary. She does not know who mark the attendance of workers of her company. MW1 admitted as correct that Gurbaksh Singh was not working in her company and she has come to depose at the instance of the management. From the aforesaid version of MW1, it is duly proved on record that the workman Gurbaksh Singh did not join M/s Singla Agencies on 01.09.2019 and certificate Exhibit 'WX' is a fake document.

16. Learned Representative for the management laid much stress on the fact that Gurbaksh Singh used to consume liquor in heavy quantity and he used to come to work place under the influence of liquor and was not performing his duties. On 09.05.2019 the workman was under drunkard condition and was not able to do any work as such he was not allowed to enter the premises. To my opinion, the aforesaid plea taken by the management also does not stand proved because the management has not placed on record any document showing any warning issued to the workman on account of consuming liquor by him during the span of 30 years of his service. The management's own witness MW2 in his cross-examination stated that work & conduct of the workman was satisfactory. If for the sake of arguments, it is assumed that the workman was not discharging his duties in a proper manner being under the influence of liquor, in that situation also, it amounts to misconduct and the management was bound to issue show cause notice, charge sheet to the workman for his alleged misconduct. Here, it is not the case of the management that it had issued any show cause notice or charge sheet to the workman or conducted any domestic inquiry against him for his alleged misconduct. As discussed above, the management has failed to prove that the workman has joined M/s Singla Agencies on 01.08.2019. Since, the workman has remained in uninterrupted and continuous service of the management w.e.f. 1989 to 09.05.2019, thus the workman is proved to have been completed continuous period of more than 240 days in 12 calendar months preceding the date of termination. Thus, the workman falls within the definition of continuous service as defined in Section 25-B of the ID Act. As per the provisions of the ID Act, no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clause (a) & (b) of Section 25-F of the ID Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment, compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. In the present case, the management has not complied with the aforesaid mandatory provisions of Section 25-F(a) & (b) of the ID Act and non-compliance therefore renders the retrenchment of an employee nullity.

17. Keeping in view the fact that the workman has rendered a considerable period of service and his services were terminated without compliance of mandatory provisions of Section 25-F of the ID Act, thus the workman is held entitled to reinstatement with continuity of service and 50% back wages.

18. Accordingly, this issue is decided in favour of the workman and against the management.

Issue No. 2 :

19. Onus to prove this issue is on the management.

20. Learned Representative for the management argued that the present claim petition is not maintainable as the workman has suppressed the material facts from this Court and has not approached with the clean hands. To my opinion, the aforesaid argument lacks merits because the management has failed to prove on record as to what material facts are concealed by the workman.

21. As far as the plea of gainful employment taken by the management is concerned, as already discussed in the findings of issue No.1, the management has failed to prove the authenticity of certificate Exhibit 'WX' which does not bear any date of issuance and also does not incorporate the date when the workman allegedly joined Singla Agencies and till which date the workman allegedly worked with Singla Agencies. MW1 in her cross-examination admitted as correct that Gurbaksh Singh was not working in her company.

22. The workman on being aggrieved from the management's act of illegal termination of his services /raised demand notice and on failure of the conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, was left with no other option than to present the industrial dispute before this Labour Court / Industrial Tribunal. Thus, the workman has a valid cause of action and *locus standi*. Nothing is forthcoming on record to show suppression of any material fact by the workman. I do not find any defect so far maintainability of the present industrial dispute reference / claim statement is concerned. Needless to say that the present industrial dispute reference is well within the territorial jurisdiction of the present Court /Tribunal.

23. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

24. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

Dated : 12-10-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/69-HII(2)-2023/18790.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **85/2020 dated 18.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BIKRAM SINGLA S/O SH. AMRIT LAL SINGLA R/O FLAT NO.1308/19, PHASE 11, NEAR PETROL PUMP MOHALI. (Workman)

AND

1. DIRECTOR, M/S SHINE & SIND SECURITY SOLUTION PVT. LTD., CORPORATE ADDRESS:-1441/3, BANGLA BASTI MANIMAJRA, CHANDIGARH. 2ND ADDRESS OF DIRECTOR, M/S SHINE & SIND SECURITY SOLUTION PVT. LTD., SCO NO86, FIRST FLOOR, SWASTIK VIHAR, MDC, SECTOR 5, PANCHKULA - 134109.
2. PRINCIPAL, GOVT. SR. SEC. SCHOOL, MAULI JAGRAN, U.T. CHANDIGARH. (Management)

AWARD

1. Bikram Singla, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was the employee of managements and was working as Security Guard in Government Senior Secondary School, Mauli Jagran, U.T. Chandigarh under the observation and control of both the managements. The managements terminated his services illegally without giving any notice to him. The workman got served the demand notice upon the managements. The managements did not make the payment of wages as per law. The workman has given the demand notice before the Court of the authority appointed under the Minimum Wages Act. The workman was employed as Security Guard in Government Model Senior Secondary School, Mauli Jagran, U.T. Chandigarh through service provider M/s Shine & Sind Security Solutions Pvt. Ltd. The nature of work fall within the meaning of Section 2(g) of the Minimum Wages Act and the workman is an employee under the ID Act. The management(s) is / are employer(s) within the meaning of Section 2(e) of the Minimum Wages Act. The workman has been paid wages less than the minimum rate of wages fixed for their category / categories of employment / employments under the Minimum Wages Act or DC rates. The salary of the workman was ₹16,695/- in March 2018, ₹17,864/- in April 2018 to March 2019, ₹19,650/- in April 2019 to June 2019, ₹15,003/- in July 2019 to October 2019 but the employer did not make the payment of wages as per the minimum rates of Minimum Wages Act. The gross salary of the workman from March 2018 to October 2019 is ₹ 3,53,666/- and in hand salary is ₹ 3,05,727/- and total amount given by the said authority / organisation is ₹2,61,530/- and there is difference of ₹ 44,197/- and like this there is difference in PF contribution made by the employer ₹ 24,664/- i.e. total amount deducted by the employer ₹ 84,880/- and deposited only ₹ 60,236/- and like this ESI deducted by employer ₹ 5,499/- and deposited only ₹ 4,731/- and the difference is ₹ 768/-. In addition to this there is no leave granted by the employer during the entire service of employee, accordingly the payment of leave encashment of 72 days comes out ₹ 47160/- and the same is due against the management. Total dues of wages and service benefits is ₹ 1,16,769/- which was required to be given by the management to the workman. The above said organisation has not followed the rules of Employees' Provident Fund and ESI etc. which were

mandatory to be followed by employer as per law. The workman estimates the value of relief sought by him must be ₹ 1,16,769/-. The employers had threatened to terminate the services of the workman when he put his demand of the remaining salary / wages before them and the workman approached to the Labour Authority, Chandigarh. The workman sent legal notice dated 03.10.2019 for not to terminate his services and also made prayer for release of salary etc. but his services are not finally terminated by the managements after receiving this notice without any intimation. The workman raised demand notice and sought the intervention of Assistant Labour Commissioner, U.T. Chandigarh. The conciliation proceedings were initiated but the same failed. Prayer is made that the services of the workman may be reinstated and the managements may be directed to make the due payments i.e. interest and penalty on the non-paid wages, direction may be issued under Section 20(3) of the Minimum Wages Act, 1948 for payment of difference of ₹ 1,16,769/- between the wages payable under the act and the wages actually paid and compensation amounting to ₹ 1,00,000/- along with compensation and other service benefits to the workman in the interest of justice.

3. On notice, management No.2 appeared through Shri Harvinder Singh - Senior Assistant and filed written statement on 02.03.2022 wherein preliminary submissions / objections are raised on the ground that the present case is not maintainable as neither the workman was engaged by the answering management nor his services were terminated by the answering management. The answering management had decided to engage the manpower on outsource basis and enter into an agreement with management No.1 on 01.03.2018 for providing the manpower. The agreement was executed from 01.03.2018 to 28.02.2019 which was further extended till 31.03.2020 on the same terms & conditions. On 01.03.2018 the workman was deputed by management No.1 in the office of the answering management as a Security Guard. The deployment order is dated 01.03.2018. No appointment letter was ever issued by the answering management. Hence, there is no relationship of employer & employee between the answering management and the workman. The workman was engaged by management No.1. Vide letter dated 07.10.2019, the workman was replaced by management No.1 from the office of management No.2.

4. Further on merits, it is stated that the workman was the employee of management No.1 and not the answering management. The workman working as a Security Guard on DC rates outsource through management No.1. According to the terms of payment of tender, the service provider being employer in relation to person engaged / deployed by him shall alone be responsible to provide the services / activities under the agreement as well as to make the payment of monthly wages / salary according to the relevant labour laws. The wage bill are processes and paid by the answering management in accordance with the laws and Acts including Employees' Provident Fund, Employees' State Insurance and Employees' Deposit Link Insurance. As per undertaking the management No.1 is responsible for monthly wages / salary and other statutory dues like Employees' Provident Fund and Employees' State Insurance, Employees' Deposit Link Insurance, Bonus, Gratuity and maternity etc. It is admitted that the workman raised a demand notice. The answering management has attended the proceedings before the Assistant Labour Commissioner, U.T. Chandigarh. Rest of the averments of claim statement are denied as wrong and averments of claim statement are reiterated.

5. At the stage of filing replication to the written statement of management No.2, none appeared on behalf of the management No.2, thus vide order dated 17.08.2022 the management No.2 was proceeded against ex-parte.

6. Notice issued to management No.1 under registered cover vide postal receipt dated 15.07.2022, received back undelivered with the postal endorsement 'left and returned to sender (RTS)'. Fresh notice issued to management No.1 through email for dated 20.12.2022 was duly executed but none appeared on behalf of management No.1. Thus, vide order dated 20.12.2022 the management No.1 was proceeded against ex-parte.

7. Replication to the written statement of management No.2 filed wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 03.02.2023 :—

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement along with other service benefits, as prayed for ? OPW
3. Relief.

9. In evidence, the workman Bikram Singla examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' & Exhibit 'W2' and Mark 'A' & Mark 'B'.

Exhibit 'W1' is demand notice dated 11.10.2019.

Exhibit 'W2' is statement of claim dated 10.10.2019 filed by the workman before the Court of Authority appointed under the Minimum Wages Act, 1948.

Mark 'A' is office copy of legal notice dated 03.10.2019 got issued by the workman Shri S. K. Khurcha, Advocate to Director of M/s Shine & Sind Security Solutions Pvt. Ltd. And Principal of Government Senior Secondary School, Mauli Jagran, U.T. Chandigarh through registered post.

Mark 'B' is copy of failure report bearing Memo No.3018 dated 26.08.2020 of A.L.C.-cum-Conciliation Officer, U.T. Chandigarh.

10. On 04.09.2023 Shri Vishal Gautam -Representative for the workman tendered on record failure report bearing Memo No.3018 dated 26.08.2020 of ALC-cum-Conciliation officer, U.T. Chandigarh vide **Exhibit 'W3'** and closed *ex-parte* evidence on behalf of the workman.

11. I have heard arguments of Learned Representative for the workman and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 & 2 :

12. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove both these issues is on the workman.

13. Under these issues, workman Bikram Singla examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed that he was appointed as Security Guard on 01.03.2018 through respondent-management No.1 to perform his duty with respondent-management No.2, who is the principal employer of the workman. The workman was working in the school of the respondent-management No.2 under the direct supervision and control of Principal of the said school. The attendance of the workman was marked under the control and supervision of the Principal of the school and due to this reason there was a direct relation of master and servant between the workman and respondent-management No. 2. The workman was remained in service with respondent-management No. 2 continuously and un-interruptedly w.e.f. 01.03.2018 to 07.10.2019, when his services were terminated by the management No.2 in an illegal manner, without following the mandatory provision of Section 25-F of the ID Act. The workman further deposed that the services of the workman were terminated without giving any notice and no retrenchment compensation was paid to the workman at the time of his termination and thereafter also. The impugned action of the management is directly hit by the provision of Section 25-F of the ID Act. The workman has raised Industrial Dispute with regard to his illegal

termination in his demand notice dated 11.10.2019. The management had also not made payment of wages as per law, for the entire period of his working w.e.f. 01.03.2018 to 07.10.2019. The workman has also submitted demand notice dated 10.10.2019 before the competent authority. The difference of amount as calculated has specifically been stated in para 6 of the statement of claim, which comes to ₹1,16,769/-. The workman is entitled to ₹ 1,16,769/-, which has been illegally withheld by the management during his service period. The workman also deposed that he served a legal notice dated 03.10.2019 to the respondents-managements through his Advocate by Regd. A.D. post. The Assistant Labour Commissioner had initiated the conciliation proceedings upon the demand notice served by the workman to the management which were culminated into the failure report dated 26.08.2020 meaning thereby the dispute raised in demand notice remains unsettled. The workman further deposed that the respondent-management No.1 has intentionally and deliberately avoided the process of summons issued by this Court and was rightly proceeded *ex-parte* by this Court. The respondent-management No.2 has filed written statement by taking false and wrong pleas, which were rebutted by the workman by way of replication. The documents annexed as Annexure 'R1' to 'R5' with the written statement of respondent-management No.2 are forged and fabricated documents, which have been created by the respondents, to refute the genuine claim of the workman. The workman is not gainfully employed after his illegal termination and fully dependent for his survival upon his relatives, friends and near / dears. The workman could not get job anywhere, despite various efforts made by him. The workman is trying to get the job in any establishment. The workman is entitled to be reinstated in service with all consequential benefits as claimed in the statement of claim. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to 'W3' and Mark 'A'.

14. From the oral as well as documentary evidence, it comes out that the demand notice dated 11.10.2019 / Exhibit 'W1' has formed the basis of present industrial dispute reference. After the failure of conciliation proceedings in connection with demand notice Exhibit 'W1' vide failure report Exhibit 'W3' of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, the matter in dispute was referred to this Court / Tribunal for adjudication.

15. In the claim statement, the workman is seeking reinstatement and payment of dues towards unpaid wages, difference of wages between the wages actually paid and wages payable under the Minimum Wages Act and payment of compensation. As far as reinstatement is concerned, the workman has not mentioned the date of termination of his service. In the demand notice Exhibit 'W1', claim statement dated 21.09.2020 as well as affidavit filed in support of claim statement, the workman has alleged that the principal employer and the contractor used to threat that if the workman take leaves then his services will be terminated and due to this reason no leave has been granted to the workman from the date of his joining till date. The relevant portion of para 2 of demand notice Exhibit 'W1' is reproduced as below :-

"2.the Principal and the contractor used to threat that if the workman takes leaves then his services will be terminated and due to this reason no leave has been granted to the workman from the date of his joining till date which is also against the natural justice and land of law."

16. In the demand notice prayer has been made not to terminate the services of the workman. In this regard the relevant portion of para 6 of demand notice Exhibit 'W1' is reproduced as below :-

"6.I, therefore, through this demand notice not to terminate the services of the workman and to release his balance, wages which are required to pay by you as per law and further deposit the ESI, EPF, PF and other monety benefits to the concerned/appropriate authority of the workman in the interest of justice."

17. In para 7 of the claim statement, the workman has alleged that the employers had threatened to terminate his services when he raised demand notice of remaining salary / wages before them. The relevant portion of para 7 of the claim statement is reproduced as below :-

"7.It is also important to mention here that the employers had threatened to terminate the services of the applicant when he put his demand of the remaining salary / wages before them and the applicant approached to the Labour Authority Chandigarh and the workman sent legal notice dated 03.10.2019 and same is attached herewith as **Annexure W-3** for not to terminate the service of the workman and also made prayer for release of the salary etc. but his services are finally terminated by the respondent after receiving this notice without any intimation."

18. From the contents of the demand notice and claim statement it would appear that till the filing of demand notice the workman was in employment and his services are allegedly terminated after the raising of demand notice by the workman. The workman in his affidavit Exhibit 'AW1/A' deposed that he remained in service with respondent No.2 continuously and uninterruptedly w.e.f. 01.03.2018 to 07.10.2019 when his services were terminated by the respondent-management No.2 in an illegal manner without following the mandatory provisions of Section 25-F of the ID Act. First of all the aforesaid version of the workman / AW1 is beyond pleadings. Secondly, if for the sake of arguments, it is assumed that the services of the workman were terminated on 07.10.2019, then the said plea is in contradiction to the contents of demand notice dated 11.10.2019 / Exhibit 'W1'. The alleged date of termination of services is 07.10.2019. Demand notice was raised subsequently on 11.10.2019. In the demand notice it is mentioned that the management is threatening to terminate his services. In case the services of the workman were terminated prior to issuance of demand notice, in that situation the workman should have mentioned the date of termination of his services in the demand notice but the same has not been done. Even in the claim statement drafted on 21.09.2020 there is nowhere mentioned that the workman remained in employment of the management w.e.f. 01.03.2018 to 07.10.2019 or that the services of the workman were terminated on 07.10.2019. Under these circumstances, the workman has failed to prove that his services were illegally terminated on 07.10.2019.

19. As far as claim of the workman for recovery of dues of unpaid wages and difference of wages is concerned, the same does not fall within the purview of Section 2-A(2) of the ID Act.

20. As far as the deduction towards ESI and PF contribution is concerned, the same does not fall within the scope of the ID Act. However, it is made clear that this observation will not operate as a bar to the workman to claim the dues of unpaid wages and difference of wages, ESI and PF contribution under the relevant provisions of law from the Court of competent jurisdiction or competent authority.

21. In view of the reasons recorded above, both these issues are proved against the workman and in favour of the managements.

Relief :

22. In the view of foregoing finding on the issues above, the present industrial dispute is *ex-parte* declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

Dated : 18.09.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/51-HII(2)-2023/18792.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **41/2021 dated 06.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARPREET SINGH, AGED 34 YEARS, S/O SHRI DHARAM PAL, R/O HOUSE NO.15, VILLAGE MALOYA, POLICE STATION MALOYA, U.T. CHANDIGARH-160024 (Workman)

AND

THE REGISTRAR, PANJAB UNIVERSITY (*INCORRECTLY SPELLED AS PUNJAB UNIVERSITY IN THE CLAIM STATEMENT*), SECTOR 14, CHANDIGARH (Management)

AWARD

1. Harpreet Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed in terms of the procedure prescribed for appointment under the Rules and joined as daily wage basis Helper on 10.04.2011 for 89 days on DC rates and thereafter, from time to time the services of the workman were extended and continued till 08.07.2014 by the management. The workman has put his continuous regular service of more than 3 years and more than 240 days in a calendar with the management. The services of the workman were terminated by the management on 08.07.2014 without any notice pay, charge sheet, inquiry and without any retrenchment compensation. At the time of retrenchment, the workman was drawing wages of ₹ 7,997/- per month. During the course of employment the workman was allotted Provident Fund number and his provident fund was also deducted. After the illegal termination of workman from his services, the management has appointed and joined new hands without giving offer of re-employment and preference to the workman. The juniors to the workman are still in service with the management. Work & conduct of the workman during the course of his employment remained very satisfactory and no inquiry, charge sheet was ever issued or initiated during his employment or after illegal termination of services. The management has not complied with the provisions of Sections 25-F, 25-G, 25-H & 25-N of ID Act and is running unfair labour practices. At the time of retrenchment, the management had assured to the workman he will be recalled whenever there is any vacancy or job requirement. But even after approach of the workman, he was always refused to rejoin. The management instead of rejoining the workman joined fresh Helpers on daily basis. Since then the workman is unemployed and has no source of livelihood. The workman waited sufficiently as per the assurance of the management. At last the workman issued demand notice dated 21.03.2020 demanding reinstatement with continuity of service along with full back wages but the management did not accede to the request of the workman. In pursuance of the demand notice the Conciliation Officer, Chandigarh initiated conciliation proceedings but the same stand failed vide order dated 18.02.2021. Prayer is made that the workman may be reinstated into service with continuity and full back wages.

2. On notice the management contested the claim statement by filing written statement on 16.07.2021 wherein preliminary objections are raised on the grounds that the Panjab University being an 'educational

institution' does not come under the definition of 'industry', hence the same is not covered under the purview of the ID Act. Therefore, Sections 25-F, 25-G, 25-H & 25-N of the ID Act are not applicable to the Panjab University. As such, the present claim is not maintainable and liable to be rejected.

3. Further in para-wise reply, it is stated that the workman was appointed as Helper on daily wage basis on 10.04.2011 for a period of 89 days initially on DC rates and thereafter his services were extended from time to time for 89 days with one day break on completion of every term of appointment. It is incorrect that the workman has put continuous service of more than 240 days in a calendar year. It is further stated that the workman was relieved on 31.07.2013 on completion of period of extension given to him, vide office orders dated 30.07.2013. Due to the appointment of Regular Peons through advertisement No.14/2008, the services of the workman were dispensed with. However, it is pertinent to mention here that office order No.8809-8811/Estt. Dated 17.04.2014, the workman was again offered appointment as daily wage Helper for a fixed period of 89 days w.e.f. the date he reports for duty and in response of the same the workman again joined the duties of the management on same date i.e. 17.04.2014. Thereafter, vide office order No.14494-95/Estt. dated 10.07.2014 he was relieved from duty w.e.f. 08.07.2014 (F.N.). It is further stated that the management has not committed any irregularity by passing the relieving orders of the workman since the assignment as daily wage Helper on contractual basis automatically ends on the expiry of contract period or completion of the seasonal examination work, whichever is earlier, without any requirement of notice as already mentioned in the advertisement circulated vide No.5767-5917/Estt. dated 17.03.2010. The advertisement has clearly stated that the daily wagers are not entitled to retrenchment compensation or to any claim for continuity of service or re-employment. It is replied as a matter of record that the workman was drawing ₹ 7,997/- per month wages at the time of his retrenchment and that the workman was allotted provident fund number and during course of employment his provident fund was deducted. It is further stated that as per Government norms it is compulsory to deduct PF of every employee whether he / she is regular or contractual. Hence, PF number allotted to every employee. The services of the workman were never terminated illegally by the management. It is denied as wrong that management appointed new hands without giving re-employment and preference to the workman. An Advt. No.6/2014 was issued for appointment of daily wage Helpers on contractual basis vide circular No. 26130-330/Estt. dated 26.12.2014. In pursuance of the same the workman also applied for the said post, however, the workman could not qualify the 'qualifying test' as he failed to appear in the physical fitness test held for the said post by the management. The fact that work & conduct of the workman during the course of his employment remained satisfactory and no inquiry, charge sheet was ever issued or initiated is a matter of record. The fact that the workman raised demand notice dated 21.03.2020 and conciliation proceedings failed as per order dated 18.02.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh is replied being matter of record. Rest of the averments of claim statement are denied as wrong except para 11 & 12, which are denied for want of knowledge and prayer is made that the claim may be dismissed being devoid of merits.

4. Replication not filed. From the pleadings of the parties following issues were framed vide order dated 08.09.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether management does not fall under the definition of 'industry' ? OPM
3. Relief.

5. In evidence, the workman Harpreet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'AW1/1' and Exhibit 'AW1/2' and Mark 'A' to Mark 'C'.

Exhibit 'AW1/1' is demand notice dated 21.03.2020 issued by the workman to the Registrar, Panjab University, Sector 14, Chandigarh under Section 2-A of the ID Act.

Exhibit 'AW1/2' is the proceedings / failure report bearing Memo No.425 dated 18.02.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh whereby on account of failure of the conciliation proceedings, the workman was advised to approach the appropriate forum for the adjudication of dispute.

Mark 'A' is publication dated 17.03.2010 for the recruitment to the post of Helper.

Mark 'B' is office order dated 10.07.2014 for relieving the daily wage Helpers, issued by Panjab University, Chandigarh.

Mark 'C' is detail instructions dated 26.12.2014 issued for recruitment of daily wage Helpers on DC rates.

6. The workman examined AW2 Surinder Singh - Clerk, Office of Panjab University, Sector 14, Chandigarh, who brought into evidence attested copies documents Exhibit 'AW2/1' to Exhibit 'AW2/7'.

Exhibit 'AW2/1' is list of appointed daily wage Helper in the Panjab University vide Adv. No. 5767-5917/Estt. dated 17.03.2011.

Exhibit 'AW2/2' is list of relieved daily wage Helpers appointed in the year 2011.

Exhibit 'AW2/3' is list of daily wage helpers engaged in the year 2012.

Exhibit 'AW2/4' is list of daily wage helpers appointed vide Adv. No.130-330/Estt. dated 26.12.2014.

Exhibit 'AW2/5' is office order No. 10712-10905/Estt. dated 29.08.2018.

Exhibit 'AW2/6' is extension order of workman from 2013 onwards.

Exhibit 'AW2/7' is list of MTS workers hired through outsourcing agency i.e. M/s Bedi & Bedi Associates in the year 2016-2017.

On 25.04.2023 workman closed his evidence in affirmative.

7. On the other hand, the management examined MW1 Surinder Singh - Clerk, Panjab University, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with certified copies of documents Exhibit 'R1' to Exhibit 'R6'

Exhibit 'R1' is brief note on notice served by Harpreet Singh, Thenki vide Memo No. 4528, 4530 dated 16.12.2020.

Exhibit 'R2' is office order No. 16862-79 dated 30.07.2013.

Exhibit 'R3' is appointment letter of the workman as a fresh daily wage-Helper on contract basis vide 8809-8811/Estt. dated 17.04.2014.

Exhibit 'R4' is office orders bearing No.14494-95/Estt. dated 10.07.2014 whereby daily wage Helpers including workman were relieved.

Exhibit 'R5' is notice bearing No. 5767-5917/Estt. dated 17.03.2010 whereby applications were invited for engaging the daily wage basis Helpers purely on temporary basis for seasonal examination/other work on fixed D.C. Rates.

Exhibit 'R6' is corrigendum to advertisement No. 06/2014 published in newspaper along with statement of candidates appeared in physical fitness test held on 06.05.2015 for the post of Helpers on daily wage basis (Advt. No.6/2014) and attendance sheet of candidates called for physical fitness test and interview for the post of Helpers on daily wage basis held on 06.05.2015.

Learned Representative for the management closed evidence on behalf of the management on 04.10.2023.

8. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

9 Onus to prove this issue is on the workman.

10. Under this issue the workman Harpreet Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1/1', Exhibit 'AW1/2' and Mark 'A' to Mark 'C'.

11. For corroboration the workman examined AW2 Surinder Singh - Clerk, Office of Panjab University, Chandigarh, who brought the summoned record in original and proved into evidence attested copies of documents vide Exhibit 'AW2/1' to Exhibit 'AW2/7'.

12. On the other hand, the management examined Surinder Singh - Clerk, Establishment Branch - II, Non-teaching, Panjab University, Chandigarh as MW1, who tendered his affidavit Exhibit 'MW1/A' and deposed that the workman was appointed as Helper on daily wage basis on 10.04.2011 for a period of 89 days initially on DC rates and thereafter his services were extended from time to time for 89 days with one day break on completion of every term of appointment. The workman was relieved on 31.07.2013 on completion of period of extension given to him, vide office order dated 30.07.2013. The workman vide office order No.8809-8811/Estt. dated 17.04.2014 was again offered appointment as daily wage Helper for a fixed period of 89 days w.e.f. the date he reports for duty and in response to the same the workman again joined the duty of the management on same date i.e. 17.04.2014. Thereafter, vide office order No.14494-95/Estt. dated 10.07.2014 the workman was relieved from duty w.e.f. 08.07.2014 (FN). The advertisements issued vide circular No.5767-5917/Estt. dated 17.03.2010 & 26130-330/Estt. Dated 26.12.2014 wherein clearly stated that the daily wagers are not entitled to retrenchment compensation or any claim for continuity of service or re-employment. An advertisement No.6 of 2014 was issued for appointment of daily wage Helpers on contractual basis vide circular No. 26130-330/Estt/ dated 26.12.2014. In pursuance to the same the workman also applied for the said post, however the workman could not qualify the qualifying test as he failed to appear in the Physical fitness test held for the said post by the management. MW1 supported his oral version with documents Exhibit 'R1' to Exhibit 'R6'.

13. From the oral as well as documentary evidence led by the parties, it comes out that there is no dispute between the parties with regard to the facts that initially the management of Panjab University, Chandigarh appointed the workman as Helper on daily wages on 10.04.2011 for a period of 89 days on DC rates. Thereafter, the services of the workman were extended from time to time for 89 days with 1 day notional break on completion of every term of employment. Thereafter, due to appointment of regular Peons through advertisement No.14/2008, the services of the workman were dispensed with 31.07.2013. Then after a gap of about 8 months

and 16 days vide office order No.8809-8811/Estt. Dated 17.04.2014 / Exhibit 'R3', the workman was again offered appointment as daily wage Helper for a fixed period of 89 days w.e.f. the date the workman reports for duty. Undisputedly, in response to office order Exhibit 'R3' workman again joined the duties of the management on 17.04.2014. In Exhibit 'R3' it was categorically mentioned as below :-

"Your assignment as daily wage - Helper on contractual basis shall automatically come to an end on expiry of the aforesaid contract period or completion of the aforesaid seasonal examination work whichever is earlier, without any obligation of prior notice. Under the law your services as daily wage - Helper on contractual basis shall not entitle you to either retrenchment compensation or to any claim for continuity in service or re-employment or regularization."

14. Further the fact remained undisputed between the parties that before the completion of time period of 89 days, the workman relieved from his duties w.e.f. 08.07.2014 (F.N.) vide office order No.14494-95/Estt. Dated 10.07.2014 / Exhibit 'R4'

15. Learned Representative for the workman argued that above mentioned condition in Exhibit 'R3' is arbitrary and unreasonable. The employer management has forced this condition upon a workman with the sole object of avoiding his obligation under the ID Act. Moreover, as per the order Exhibit 'R4', the employees, whose services were dispensed with, were given assurance that they will be recalled whenever there is any vacancy or emergent requirement for seasonal examination works. Learned Representative for the workman laid much stress upon the fact that the management has even failed to fulfil the aforesaid assurance as fresh advertisement No. 6/2014 was issued for appointment of daily wage-Helper on contractual basis but the workman was neither recalled to join service nor any preference in appointment was given to the workman. To support his arguments Learned Representative for the workman referred cross-examination of MW1 wherein he has stated that no preference was given to any previous contractual workman. To support his argument Learned Representative for the workman referred the judgments **1998(1) RSJ 703 (P&H) titled as Bhikku Ram Versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak** and **2001(1) SCT 205 (P&H) titled as The Faridabad Central Co-Op. Bank Ltd., Faridabad Versus The Presiding Officer, Labour Court (II), Faridabad.**

16. On the other hand, Learned Representative for the management contended that the management has not violated any provisions of the ID Act and has not acted in arbitrary manner, as alleged. The advertisement No.6/2014 was applicable to all the applicants including those whose services were dispensed with vide office order / Exhibit 'R4' and in the present case the workman applied for the post but did not appear for his physical test, therefore, the workman did not qualify the qualifying test.

17. To my opinion, the aforesaid contention raised by Learned Representative for the management carries force. AW1 Harpreet Singh in his cross-examination denied the suggestion as wrong that he applied and was called for the physical test vide advertisement dated 26.12.2014. AW1 denied the suggestion as wrong that the said physical test was held on 05 / 06 May, 2015 and he did not appear in the same. AW1 voluntarily stated that he did not apply against advertisement dated 26.12.2014 and he did not receive any intimation for appearing in the physical test. To my opinion since it is undeniable fact that the advertisement for the post bearing advertisement No.6/2014 was published in newspaper The Tribune and Dainik Bhaskar Edition dated 26.12.2014 and thereafter corrigendum of Advertisement No.6/2014 vide Exhibit 'R6' was also published in the newspapers the Tribune (English Edition) thus it is sufficient notice to the general public including the workman. Exhibit 'R6' is accompanied with the statement of the candidates appeared in physical fitness test held on 06.05.2015 and 05.05.2015 for the post of Helper on daily wage basis (Advt. No.6/2014) and the attendance of the

candidates called for the physical fitness test held on 06.05.2015, which incorporates the name of the workman Harpeet Singh at serial No.553 and is marked 'Absent'. From the aforesaid document, it is duly proved on record that the workman applied in pursuance of Advt. No.6/2014 but did not appear for the qualifying physical fitness test. MW1 in his cross-examination categorically stated that the terms & conditions of the advertisement were applicable equally to all the applicants. No preference was to be given to any previous contractual workman. This version of MW1 is in context to applicability of terms & conditions of Advt. No.6/2014. MW1 further stated that the workman did not appear for his physical test. As far as the legality of Advt. No.6/2014 is concerned, the workman has not challenged the same before any competent court of jurisdiction or forum. Furthermore, the workman has not disputed his relieving w.e.f. 31.07.2013 on the basis of office order dated 30.07.2013 due to appointment of regular Peons through advertisement No.14/2008.

18. As far as applicability of Section 25-B of the ID Act is concerned, the workman has failed to prove that he has completed continuous period of service of 240 days in twelve calendar months preceding the date of termination. In the present case, after relieving on 31.07.2013 the workman in pursuance of order Exhibit 'R3' joined on 17.04.2014. As per order Exhibit 'R4' workman was relived from duty w.e.f. 08.07.2014. Thus, the workman actually worked for 106 days under the employer / management of Panjab University, which is less than 240 days. In case titled as ***Gram Panchayat Versus Shardkumar D. Acharya reported in 1994 LLR 470 (Gujarat) (DB)***, it has been held that a workman is deemed to be in the continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. In the present case, the workman has actually worked only for 106 days during the period of twelve calendar months preceding the date of termination, thus does not fulfil the requirement of Section 25-B of the ID Act. Consequently, the provisions of Section 25-F of the ID Act is not attracted. The law laid down in the judgments referred by Learned Representative for the workman reported in ***1998(1) RSJ 703 (P&H) and 2001(1) SCT 205 (P&H) (supra)*** is well recognized by this Court but the ratio of the ruling is not applicable to the facts of the present case.

19. Accordingly, this issue is decided against the workman and in favour of the management.

Issue No. 2 :

20. Learned Representative for the management argued that the Panjab University is an educational institution and does not fall within the definition of 'industry' as defined in Section 2(j) of the ID Act. To my opinion the aforesaid argument advanced by Learned Representative for the management is devoid of merits. In the judgment of Hon'ble Supreme Court titled as ***Bangalore Water Supply & Sewerage Board, etc. Versus R. Rajappa & Others*** reported in ***AIR 1978 SC 548***, it has been held that educational institutions are an 'industry', accordance with Section 2(j) of the ID

21. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

22. In the view of foregoing findings on the issue No. 1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory Chandigarh.

UID No. PB0152.

Dated : 06.10.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/55-HII(2)-2023/18794.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **12/2020 dated 03.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM BHOO, AGED 36 YEARS S/O SH. RAMESH SINGH, R/O HOUSE NO.2192, SECTOR 24-C, CHANDIGARH PRESENTLY RESIDING AT HOUSE NO. 2374, DADU MAJRA COLONY, CHANDIGARH (Workman)

AND

1. AMAN SECURITY & DETECTIVES REGD. OFFICE AT AMAN NIWAS 3950, SECTOR 47-D, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.
2. DIRECTOR, SOCIAL SECURITY AND WOMEN & CHILD DEVELOPMENT DEPARTMENT, PUNJAB, H.NO. SCO NO.102-103, SECTOR 34-A, CHANDIGARH. (Management)

AWARD

1. Ram Bhool, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as a Sweeper on 13.07.2012. The monthly salary of the workman was ₹ 11,995/- per month excluding TA / DA and other allowances. Initially the workman was appointed Sweeper at the office of management No.2. During this period, the workman was working with dedication and devotion and there was no complaint whatsoever against the workman. On 08.06.2018 the workman was performing his duties and after completing his duties Ms. Lilly Chaudhary - Joint Director told the workman to perform the duty of Mali (Gardener) at the residence of Mrs. Kavita Singh W/o Purusharth R/o House No. 80, Sector 7, Chandigarh but the workman showed his inability. Then Mrs. Lilly Chaudhary - Joint Director used abusive and filthy language and also made sarcastic remarks on his profile and identification and threatened the workman to face dire consequences. Thereafter under compelling circumstances the workman went to do the work of Gardner at the residence of Mrs. Kavita Singh. After that P.A. Ram Singh also called the workman for Mali / Gardener in her house but the workman was unable to do the said work as his daughter was ill and there was no other person to take care of her. However, under compelling circumstances the workman went to the said house and performed his duties. In the evening, the workman received phone call from PA Ram Singh of the management No.2, who told that the said Madam is not satisfied with the work of the workman and further told to attend the duty in the morning at the said house. The workman requested that his daughter is seriously ill and he cannot attend the duty but he did not listen and told that if the workman did not do the work, then he will be terminated from the services. On the next day in the morning the workman went to the house for doing job but Mrs. Kavita Singh told that the work of workman is not satisfactory and further told not to join the office furthermore. The workman was shocked after listening the words from Mrs. Kavita Singh. The workman was performing his duties till 26.07.2018 in the office of management No.2. Then, management No.1 called the workman and told him that now the workman has not to do work with the management No.2 but on 26.07.2018 the workman performed his duties and he was told that not to continue duty. The workman along with his wife and children went to the office of Director for joining his duties but she flatly refused and told the workman, not to do the work. At the time of joining the

services managements assured that all the benefits i.e. gratuity, bonus, GPF, PPF and other allowances will be given to the workman but the same were never given to him during this long period of 6 years of service. The action of management No.2 by illegally and unlawfully terminated the services of the workman is against the principle of natural justice and the provisions of the ID Act, as such, the same is unwarranted in the eyes of law and the same is thus liable to be set aside. It is further averred that when the workman was in service, company never paid TA / DA and other allowances, though the other employees of the company were getting the same. The workman was not paid even one month's salary by the company /management. No inquiry was conducted against the workman and without any complaint the services of the workman were terminated which is totally illegal. The workman is very poor and being harassed by the management time and again without any fault of workman. It is a clear cut case of harassment to the workman and is also a case of violation of terms & conditions of the appointment and is atrocities upon the workman. Act of management is totally illegal, unlawful and against the principle of natural justice and is also violative of the conditions of provisions under Section 25-F and 25-G of the ID Act. The workman earlier filed demand notice before the Assistant Labour Commissioner but the same could not be settled by the management and the matter was referred to this Court on 10.01.2020 for adjudication. Prayer is made that management may be directed to reinstate the workman along with all back wages, to release TA / DA, GPF, PPF etc., to pay ₹ 1,00,000/- as compensation for harassment and mental agony etc. and to pay ₹ 22,000/- as litigation expenses and any other relief which this Court deemed fit as per the facts & circumstances of the case, be granted in the interest of justice.

3. On notice, management No.1 filed written statement on 22.02.2021 wherein preliminary objections are taken on the ground that the claim statement is liable to be dismissed on the ground of concealment of material facts as well as mis-statement of material facts. The claimant was deployed with the management No.2 vide letter dated 13.07.2012 has not worked after 26.06.2018. The claimant submitted the demand notice in the office of Assistant Labour Commissioner on 06.09.2018 and the answering management appeared before the Assistant Labour Commissioner. In conciliation proceedings, the matter could not be resolved. The answering management offered the claimant to join some other department as management No.2 is not satisfied with his work & conduct. However, the claimant declined the offer. Thereafter, the claimant approached the management No.1 and submitted his resignation on 14.12.2018 and the same was accepted. After the acceptance of the resignation, the claimant applied for release of EPF and the same was released by the PF authorities. Thereafter, after more than 1 year, the claimant submitted the claim statement before this Court.

4. Further on merits, it is stated that the claimant was deployed as a Sweeper on 13.07.2012. However, no TA / DA and other allowances were admissible to the claimant. Management No.2 was not satisfied with the work & conduct of the claimant and has received many complaints against the claimant. The facts alleged in para 3 & 4 of the claim statement relates to management No.2. It is denied as wrong that the claimant was performing his duties till 26.07.2018 in the office of management No.2, as per the information available with the answering management. The remaining contents of para 5 of claim statement relates to management No.2. The bonus as and when released by the Government was paid to the claimant. The claimant has already withdrawn the PF and other benefits from PF authorities. The claimant is intentionally concealing the fact of withdrawal of PF from PF authorities after submitting his resignation with management No.1. The claimant has not completed 240 days in the last 12 preceding months from the date of alleged termination. The claimant was offered services on the other department. However, the claimant declined the offer. Even before the Conciliation Officer, answering management has asked the claimant to join the other department as management No.2 is not satisfied with the work & conduct. The services of the claimant were not terminated by the answering management on 26.07.2018 as alleged in the claim statement. Rather after 26.06.2018, the claimant stopped coming to the duties TA / DA is not admissible. However, all other admissible allowances were paid to the claimant. The answering management had been depositing the ESI and PF contributions of the claimant as provided under the law. Even the claimant has withdrawn his PF from the EPF authorities after submitting his resignation. After receiving the PF from the EPF authorities claimant has filed the present claim petition before this Court. It is denied as wrong that the claimant was not paid even 1

month salary by the company / management. All dues including the wages have been paid to the claimant. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed be devoid of any merit.

5. Management No.2 contested the claim statement by filing separate written statement on 04.12.2020 wherein preliminary objections are taken on the ground that there is no employee-employer relationship between the answering management / department and workman. The department / management No.2 engaged management No.1 to provide manpower to the department through a contract dated 01.06.2012. Later on another contract dated 01.09.2015 was entered between management No.1 & 2. Another contract was entered between management No.1 & 2 on dated 23.08.2016 which shall remain in force for three years. Management No.1 provided the department with the services of the claimant as a Sweeper. According to clause 6 of the contract dated 23.08.2016, all the personnel would be under the over all control of the management No.1. Further, the claimant is not on the pay roll of the answering department. As per Clause 7 of contract dated 23.08.2016, management No.1 has to raise bills every months for the payments to be made by the department for the services provided by the agency and after verification of said bills, as per the terms & conditions of this Court, all the payment shall be made directly by the department to the agency. The answering management made payments to management No.1 through cheque / RTGS and the management No.1 has to make onward payment to the concerned personnel. In addition to it according to Clause 15 of contract dated 23.08.2016, the management No.1 shall provide the replacement of the personnel, in case of any misconduct, non-compliance or disobedience. The work & conduct of the claimant was not satisfactory since the beginning. The claimant used to shirk work and misbehaved with the officials as well as his colleagues, when asked to do his work. Several verbal complaints were received against the complaint from his colleagues and higher officials. The claimant reprimanded on several occasions, on which his conduct & work would improve for some time but the claimant would again return to the same tactics. However, over the period his work deteriorated to such an extent that the management department started receiving written complaints. In the end, 3 written complaints were received against the claimant. Accordingly the management-department issued a letter dated 26.08.2018 to replace the claimant with other suitable workman. The management No.1 replaced the claimant with another candidate namely Raj Kumar S/o Shri Satnaryan on 27.06.2018.

6. Further on merits, it is stated that the management No.2 has engaged the services of management No.1 (agency) to provide manpower. The management No.1 provided the services of the claimant to the department. It is correct that the claimant joined the services on 13.07.2012. The answering management paid a lump sum amount of ₹19,459/- P.M. to the management No.1 following the monthly bill raised by the management No.1 for the claimant. The conduct & work of the claimant was not satisfactory since the beginning. The claimant had not been performing his service satisfactorily. The claimant often used dilly-dallying tactics and tried to shirk work. In addition to it, the claimant often misbehaved inappropriately with his colleagues as well as officers. Several verbal complaints were received against the workman from officers. The claimant was reprimanded on several occasions but the claimant did not pay heed. In the end, written complaints have been received by the management-department against the claimant. The claimant has presented a concocted story in para 3 of the claim statement and there is no truth in it. All these allegations raised by the workman are baseless without any documentary or cogent proves placed on record. The claimant is trying to mislead the Court by presenting a false story. The correct fact is that the claimant was himself at fault as he is a work shirker and has complete disregard for his seniors. On 26.06.2018, a letter was issued to management No.1 for replacing the claimant with another candidate. The claimant performed his duties till 27.06.2018. It is denied that the claimant worked in the office of management No.2 till 26.07.2018. The management No.1 was engaged to provide required personnel and the management No.1 provided the department with the services of the claimant and other personnel. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong except para 6 and 10 which are denied for want of knowledge and prayer is made that the notice may be quashed qua the answering management.

7. The workman filed joint replication to the written statement / reply of management No.1 & 2 wherein the contents of the written statement except admitted facts of the claim statement, are denied as wrong and averments of claim statement are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 19.05.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.2 and workman ? OPM-2
3. Relief.

9. In evidence, workman Ram Bhool examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'C1' to Exhibit 'C5'.

Exhibit 'C1' is photocopy of identity card of Ram Bhool issued by Punjab Government, Director Social Security and Women & Child Development Department, Sector 34-A, Chandigarh.

Exhibit 'C2' is copy of letter dated 13.07.2012 issued by Aman Security & Detectives (Regd.) to the Deputy Director, Social Security and Development of Women & Children, Sector 34-A, Chandigarh.

Exhibit 'C3' is copy of OPD slip relating to Ms. Kashvi D/o Ram Bhool issued by GMSH, Sector 16, Chandigarh.

Exhibit 'C4' is compact disc (CD)

Exhibit 'C5' is copy of demand notice dated Nil raised by Ram Bhool under Section 2-A of the ID Act.

10. It is pertinent to mention here that at the time of recording evidence the documents Exhibit 'C1' to 'C5' were objected to on the ground of mode of proof as original were not produced.

11. On 14.11.2022 the workman closed his evidence. At that time management No.2 was already ex-parte vide order dated 04.10.2022. On moving of application on 23.01.2023 by the management No.2 and after taking its reply from the workman and hearing the parties, vide order dated 07.03.2023 *ex-parte* order dated 04.10.2022 qua management No.2 was set aside subject to conditional cost of ₹ 1,000/-. The cost imposed vide order dated 07.03.2023 was not received by the workman and the statement of the workman regarding non-receipt of cost was recorded on 24.03.2023. The remaining cross-examination of AW1 Ram Bhool conducted by management No.2 was recorded on 24.03.2023. Thereafter, the workman closed his evidence on 24.03.2023.

12. On the other hand, management No.1 examined MW1 J. S. Tanwar - Proprietor, M/s Aman Security & Detectives (Regd.), who tendered his affidavit Exhibit 'MW1/A' along with copy of letter dated 04.09.2018 vide **Mark 'X'** and computer generated copy of salary slip for the month of June & July 2018 vide *Exhibit 'M1'*.

13. Management No.2 examined MW2 Rekha, Sweeper, Head Office, Department of Social Security and Women & Child Development, Punjab, Sector 34-A, Chandigarh, who tendered her affidavit Exhibit 'MW2/A' along with complaint dated 20.06.2018 filed against the workman vide **Exhibit 'MW2/A'** (*Exhibit 'MW2/A' is numbered twice. Therefore, in order to avoid any ambiguity, the complaint dated 20.06.2018 is herein after renumbered as 'MW2/1'*).

14. On 01.06.2023 Learned Representative for management No.1 closed evidence. On 25.08.2023 Learned Representative for management No. 2 closed oral evidence. On 03.10.2023 Learned Representative for management No.2 closed documentary evidence.

15. I have heard the arguments of the workman and Learned Representatives for the management No. 1 & 2 and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 & 2 :

16. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on management No. 2.

18. In support of claim statement, workman Ram Bhool examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version AW1 placed on record photocopy of the documents Exhibit 'C1' to Exhibit 'C3' and Exhibit 'C5'. In support of CD Exhibit 'C4', the workman has filed his affidavit under Section 65B of Evidence Act stating therein that the information contained in electronic record (CD) is derived from his mobile phone in the ordinary course.

19. On the other hand, management No.1 has examined MW1 J. S. Tanwar - Proprietor of M/s Aman Security & Detectives (Regd.) who vide his affidavit Exhibit 'MW1/A' deposed that his firm had been awarded the contract by the respondent No.2 to provide manpower and the workman was deployed as Sweeper on 13.07.2012. The respondent No.2 was not satisfied with the working of the workman and thus he offered the workman to join other department, however the workman did not work after 26.07.2018 and raised industrial dispute by submitting the demand notice in the office of Assistant Labour Commissioner on 06.09.2018 and he put in appearance before the Assistant Labour Commissioner. As submitted earlier, he offered the workman to join other department as the respondent No.2 is not satisfied with the work & conduct of the workman / claimant, however the claimant declined the offer. Thus, the dispute could not be resolved during the conciliation proceedings. MW1 further deposed that the claimant came to his office on 14.12.2018 and submitted the resignation which was accepted by him on the same day. Thereafter, the claimant approached him for withdrawing the EPF and the claimant brought the EPF withdrawal form filling all the columns of the form for getting it counter signed from him. The form is already exhibited. MW1 submitted that the personal file of the claimant had been misplaced. After more than two years of withdrawing the EPF and submitting the resignation, the claimant submitted the claim statement in this Court. The claimant never brought to his knowledge the allegations leveled against the officials of respondent No. 2 in the claim statement. No TA / DA was admissible to the claimant however the other benefits like EPF etc. were paid to the claimant and even the claimant had withdrawn EPF. The claimant was paid all the wages as per law. The wages for the month of July 2018 had been transferred to the claimant's account No.02421000022164, Punjab & Sind Bank in September, 2018 through RTGS. MW1 also deposed that his contract with respondent No.2 came to an end in October 2019. MW1 supported his oral version with documents Exhibit 'M1' and Mark 'X'.

20. Management No.2 has examined MW2 Rekha - Sweeper, Department of Social Security and Women & Child Development, who vide her affidavit Exhibit 'MW2/A' deposed that she is working with the department from last 28 years as Sweeper. The applicant (Ram Bhool has been referred as applicant in affidavit Exhibit 'MW2/A') was also working as Sweeper in this department. The applicant always used to misbehave with officials as well his colleagues. She has made several verbal / written complaints against the applicant to the authorities / department regarding the misbehaviour and foul language used by the applicant with her, which is not even appropriate to mention here. The applicant was employed in this department by the agency respondent No.1. MW2 in support of her oral version placed on record copy of complaint filed by her against the workman Ram Bhool to Director, Social Security Women & Children Development, Punjab, Chandigarh vide Exhibit 'MW2/1'.

21. From the oral as well documentary evidence led by the parties, it comes out that the workman was employed by the contractor / management No.1 i.e. Aman Security & Detectives (Regd.) and deployed to work as a Sweeper with the department of Social Security and Women & Child Development, Punjab, Sector 34-A, Chandigarh as per the appointment letter dated 13.07.2012. MW1 J. S. Tanwar - Proprietor of Aman Security & Detective in his cross-examination conducted by the workman admitted as correct that the workman performed duty being a contractual employee with the management No.2 from 13.07.2012 to 26.07.2018. Volunteered, that he does not remember the exact date of his (workman) last day of working with the management No.2. MW1 in his cross-examination stated that the workman was deputed by his agency in the Department of Social Welfare Women & Child Development, Chandigarh situated in Sector 34-A, Chandigarh. MW1 admitted as correct that letter dated 13.07.2012 / Exhibit 'C2' was issued to the workman by him being Proprietor of Aman Security & Detectives (Regd.) whereby the workman was deployed with the department of Social Security and Development of Women & Children, Sector 34-A, Chandigarh. The aforesaid suggestion put by the workman to MW1 would led to the inference that the workman was contractual employee of

management No.1 deployed with management No.2 w.e.f. 13.07.2012. In this regard, there is a direct relationship of employer & employee between the management No.1 & the workman. As far as relationship of the workman with management No.2 is concerned, the workman failed to controvert the fact that management No.1 has to raise bills every months for the payments to be made by the department for the services provided by the agency and after verification of said bills, all the payment were made directly by the department to the agency and the agency / management No.1 had been making onward payment to the concerned personnel. In this manner, the monthly wages were paid by the contractor / management No.1 to the workman and not by the department i.e. management No.2. Even the wages for the month of July 2018 had been paid to the workman through bank transaction in September 2018 as proved from Exhibit 'M1'. In this regard, MW1 in his affidavit Exhibit 'MW1/A' categorically stated that the wages for the month of July, 2018 had been transferred to the account No.02421000022164 Punjab & Sind Bank of the claimant through RTGS and the copy of document showing the payment is Exhibit 'M1' and Mark 'X'. In cross-examination the aforesaid version of MW1 has not been controverted by the workman, thus, the same is deemed to be admitted by the workman. The expression 'control and supervision' in the context of contract labour has been explained by the Hon'ble Apex Court of India in **International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374** in para 38 and 39 held as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

In view of the aforesaid judgment, which is applicable to the facts of the present case to an extent, the workman is direct employee of the contractor i.e. M/s Aman Security & Detectives (Regd.) and the control of principal employer i.e. Department of Social Security and Women & Child Development is secondary in nature as control over the workman is exercised by the department only after the workman has been assigned to the principal employer to do a particular work of Sweeper. Therefore, there is no relationship of employer & employee between the management No.2 and the workman.

22. The workman / AW1 in support of his affidavit Exhibit 'AW1/A' relied upon Exhibit 'C1' to Exhibit 'C5'. As far as document Exhibit 'C2' is concerned, the same is deployment letter of the workman, which is not disputed by any of the parties, thus, stand admitted and the objections raised to its admissibility on the ground of mode of proof is not sustainable. As far as documents Exhibit 'C1', Exhibit 'C3' and Exhibit 'C5' are concerned, the workman did not produce the original of the same, thus the objection raised on the admissibility of the said documents is sustainable. As far as CD Exhibit 'C4' is concerned, though it is supported with affidavit of the workman under Section 65-B of the Indian Evidence Act but the same is of no support to the workman because neither the transcription of the contents allegedly contained in Exhibit 'C4' / CD is brought on record nor the contents thereof are put to any of the management's witnesses during their cross-examination.

23. In this case the workman has challenged the termination of his services w.e.f. 27.07.2018 being illegal. There is no written order of termination of services of the workman. The workman has alleged that on dated 26.07.2018 he was refused to continue his duties by management No.1. On the other hand, Learned Representative management No.1 has argued that it is the workman who voluntarily resigned from his duty by tendering his resignation on 14.12.2018 which was accepted. The aforesaid arguments raised by Learned Representative for the management No.1 carries force because the workman had failed to controvert the fact that he had already withdrawn his PF from the EPF authorities. The management No.1 has

proved into evidence the withdrawal form of EPF submitted by the workman vide Exhibit 'R1/4' wherein in column No.9 the reason for termination of services is mentioned as 'Resigned'. Furthermore, in Exhibit 'R1/4' the period of joining the establishment is written as 1st July, 2013 and date of leaving service is written as 30.06.2018. Management No.1 in cross-examination of the workman had put documents Exhibit 'R1/1' to Exhibit 'R1/4'. The relevant portion of cross-examination of AW1 is reproduced as below :-

"It is correct that the Exhibit R1/1 is my PAN card and signature at Point 'X' is of mine. Similarly Exhibit R1/2 bearing my signatures. It is correct that Exhibit R1/3 is the copy of my bank passbook having my account number. It is correct that Exhibit R1/4 is the composite claim form submitted to EPF authorities which bears my signatures at Point 'Y' and Point 'Z'. It is correct that I have withdrawn my EPF from the EPF Authorities by submitting Exhibit R1/4.It is correct that I have submitted the demand notice on 06.09.2018 and thereafter submitted Exhibit R1/4 to the EPF Authorities for withdrawing my EPF."

From the aforesaid version of AW1, it is duly proved on record that the workman submitted composite claim form Exhibit 'R1/4' to withdraw the amount of his EPF after mentioning the reason of termination as resigned. AW1 in his cross-examination has denied the suggestion as wrong that he has resigned from the post. The aforesaid denial of suggestion as wrong is not acceptable being contrary to the contents of Exhibit 'R1/4'. It is well settled principle of law that a person may tell lie but a document may not. Moreover, in case of conflict between the oral and documentary evidence, the documentary shall prevail under Section 92 of The Indian Evidence Act. Therefore, the fact whether MW2 Rekha - Sweeper working with management No.2 had filed a complaint against the conduct of workman becomes immaterial.

24. In view of the reasons recorded above, it is duly proved into evidence that the workman himself resigned from the post of Sweeper and thereafter withdrawn his EPF payment from the EPF department. From the information supplied by the workman in Exhibit 'R1/4' it is further proved that the workman joined the establishment on 01.07.2013 and left the service on 30.06.2018. This fact supports the plea of the management that the workman did not come to his duty after 26.06.2018. The workman resigned subsequently on 14.12.2018.

25. Accordingly, issue No.1 is proved against the workman and in favour of management No.1 & 2. Issue No.2 is proved in favour of management No.2 and against the workman.

Relief :

26. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03.10.2023.

Secretary Labour,
Chandigarh Administration.

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